IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4939 of 2000
with
SPECIAL CIVIL APPLICATION No 4951 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HIMATBHAI HIRJIBHIA NANDA & JAYESHBHAI R. THAKKAR
Versus
STATE OF GUJARAT

Appearance:
MR HR PRAJAPATI for Petitioner
MR DP JOSHI AGP for Respondent No. 1 to 3
MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE B.C.PATEL

Date of decision: 11/08/2000

COMMON ORAL JUDGEMENT

#. This Court is moved at the instance of the detenues in two separate petitions under Article 226 of the Constitution of India, for seeking relief of habeas

corpus or such other direction directing the respondents to release the detenues forthwith.

#. Short facts leading to the present petitions are as under.

#. The detenue of Special Civil Application No 4939 of 2000 was detained on 2.5.2000. The order of detention was passed on 15.3.2000 in exercise of powers under subsection (2) of section 3 of the Prevention of Blackmarketing & Maintenance of Supplies of Essential Commodities Act, 1980 (hereinafter referred to as "the Act"). It is alleged in the grounds of detention that the detenue was dealing in the articles in breach of conditions of Order namely Gujarat Essential Articles (License, Control & Declaration of stock) Order, 1981 (for short, hereafter referred as "Order"). It is alleged in the grounds of detention that on 8.3. 2000, Circle Police Inspector searched the premises and seized the documents in connection with transport of Industrial Solvent. There are several instances quoted in this regard. It is further disclosed in the grounds of detention that without any pass or permit, by joining hands with others i.e. M/s. Sai Enterprise, Malad, Mumbai, Panorama Chem Paint, Allahabad and R.S. Petrochemicals Limited, Lasundra, the detenue was acting in contravention of conditions for supplying Industrial Solvent under the Act and the Order. At the time of seizure, the police officer seized documents indicating that from Indian Oil Corporation Koyli Refinery, material was despatched on 13.1.2000 to Shalimar Chemical Industries Pvt. Ltd. in tanker No. GTK - 5102. Similar is the allegation with regard to transhipment of article on 12.1.2000. The Indian Oil Corporation has issued bills. However, as disclosed in the grounds of detention instead of supplying the material to Shalimar Chemical Industries Pvt. Limited, article was sold in the State and was not supplied to the buyer. The quota which was sanctioned for the place situated outside the Gujarat was thus utilized and by selling the same in the State of Gujarat, the detenue has unlawfully gained. This has affected proper distribution of essential comodity.

#. In the grounds of detention, it is clearly mentioned that the police was investigating and the detenue has been detained. It is further stated that, however, the detenue was trying his level best to get himself released on bail, and if, released on bail, he may continue his illegal activities.

#. Learned counsel for the petitioner has drawn the attention of this Court to a letter dated 15.3.2000 at page 32, which is issued by the District Magistrate, Baroda, inter alia calling upon District Superintendent of Police, Baroda to serve the order on the detenue. The letter further indicates that if the detenue is arrested and detained, the statements of the members of the family should be recorded thus making them aware about the detention of the detenue and the detenue be sent to Bulsar District Jail.

#. Special Civil Application No. 4951/2000 though facts are slightly different, but the question raised in the petition being the same, is disposed off with Special Civil Application No. 4939/2000 by this common judgment. So far as the detenue in Special Civil Application No. 4951/2000 is concerned, it is alleged that the detenu was engaged in manufacture of the solvent in the name and style of Jal-hai Power Petrochem Limited. A licence was issued in favour of the Company under the provisions contained in the Order. It is stated at the bar that other directors of the Company were also detained, however, their petitions are allowed on the ground of serving the order after delayed period.

#. So far as the present detenue is concerned, from the grounds of detention, it appears that in one case where the unit of the petitioner supplied material to Shirohi, inquiry revealed that at Shirohi, there was no factory and there was no evidence of supply of goods etc. Thus, the solvent was not sent out of Gujarat. With a view to confirm this, inquiries were made at Palanpur and from there also, it is found that no such goods have been passed through Palanpur. Thus, though solvent was sold in the State, documents were prepared to show that solvent was supplied to a party at Shirohi. With regard to Parshva Industries to which it was stated by the detenue that the Industrial Solvent has been sold, in the grounds of detention, it is disclosed that, in fact, no such goods have been sold, there was no process of any material and no rent of the tanker was paid for transhipment of solvent. It is required to be noted that earlier a statement was recorded. Thereafter, on 7.3.2000, he has stated that his earlier statement was wrong and the reliance is placed on the statement recorded subsequently. So far as the goods alleged to have been dispatched to Maharashtra are concerned, inquiry revealed that no such material was forwarded to Maharashtra but the solvent was sold in the State of Gujarat. Details are given in the order. The bills which were checked by the detaining authority however

revealed that, the tankers through which the solvent is alleged to have been transported as indicated in the bills were in fact not the tankers but were different vehicles such as autorickshaw, truck etc. Upon this and other grounds, the order of detention was passed which was executed on 2.5.2000. The detenue was in jail since 21st March, 2000. However, in the instant case, in the order, there is nothing to show that the detaining authority was aware about the fact that the detenue was in custody. Nonetheless, the fact remains that the order was executed on 2.5.2000.

#. Various grounds are urged in both these petitions. However, both these petitions can be disposed only on a short ground and therefore, the other grounds are not discussed.

#. In Special Civil Application No. 4951/2000, though the detenue was in judicial custody since 21.3.2000, the order was not executed till 2.5.2000. There is no reasonable explanation for not serving the order of detention which was made on 3.4.2000. So far as Special Civil Application No. 4939/2000 is concerned, it was within the knowledge of the detaining authority that the detenue was in judicial custody. However, the detaining authority thought it just and proper to forward the process to the District Superintendent of Police for execution. The District Superintendent of Police did not execute the order till 2.5.2000 and no explanation whatsoever has been placed before the Court. If the detenue was in judicial custody, then it is difficult to understand as to why the detenue could not be served with the order. It was the duty of the District Superintendent of Police to serve the order and also to convey the information to the family members and to record their statements. If the D.S.P. would have tried to serve the order soon after receiving the same, he would have come to know about the fact that the detenue is in custody. As the State has not placed any explanation before the Court as to why the detenue could not be served, the continued detention in both the cases is required to be held as bad and illegal. Mr. Thakkar, learned counsel appearing for the petitioner -detenue drew attention of this Court to a reported decision of the Apex Court in the case of A. Mohammed Farook v. Jt.Secretary to Government of India, reported in (2000)2 SCC 360. In that case, the order of detention was passed on 25.2.1999 under section 3 (1) of the Conservation of Foreign Exchange & Prevention of Smuggling Activities Act, 1974. It was contended before the Apex Court that the authorities have not executed the order of detention

immediately. The authorities had chosen to execute the detention order on 6.4.99after an inordinate and unreasonable delay of 40 days. In that case, the detenue was not only attending his office regularly but he appeared in the court of Addl. Chief Metropolitan Magistrate on 25.2.99 and 25.3.99 when his case was listed before him and thus, it was submitted that though the detenue was available, the order of detention was not served. In para 10, the Court observed as under.

"As indicated earlier the only explanation given by the detaining authority as regards the delay of 40 days in executing the detention order is that despite their efforts the petitioner could not be located at his residence or in his office and therefore, the order could not be executed immediately. No report from the executing agency was filed before us to indicate as to what steps were taken by the executing agency to serve the detention order. In the absence of any satisfactory explanation explaining the delay of 40 days, we are of the opinion that the detention order must stand vitiated by reason of non-execution thereof within a reasonable time. From Annexure P-2 (the proceeding-sheet of the Metropolitan Magistrate's Court, Madras) it appears that the petitioner (accused) was present in the Court of the Additional Chief Metropolitan Magistrate on 25.2.1999 as well as on 25.3.1999. Despite such opportunities neither the detaining authority nor the executing agency as well as the sponsoring authority were diligent to serve the detention order on the petitioner at the earliest. In this view of the matter, we are of the opinion that the subjective satisfaction of the detaining authority in issuing the detention order dated 25.2.1999 is vitiated. It is in these circumstances not possible for as to sustain the detention order."

##. Mr.Thakkar submitted that in the instant case, the authority making an order of detention and the authority expected to execute the order, both have tried to delay the execution of the order only with a view to see that the detenue remains for a longer period in the custody. The intention of the detaining authority as submitted by Mr. Thakkar was that by chance, if the petitioner is released, he should be detained in view of the order. So far as the detenue remains in custody, there was no

reason for the detaining authority to detain the detenue and thus, with a malafide intention, the order was not served. Mr.Thakkar submitted that the order was not served immediately though the detaining authority was aware that the detenue is in judicial custody, because, respondents wanted to see that the detenue is detained for a period as large as possible. The detaininpg authority wanted to see that the detenues remain in the custody for longer period and with that intention in mind, the authorities have delayed the execution of the order. In both these matters, there is no satisfactory explanation by the detaining authority as to why the orders of detention were not served. Under these circumstances, the continued detention is required to be held as bad and illegal and the petitions are required to be allowed.

##. These petitions are allowed. The impugned orders of detention in both these petitions are hereby quashed and set aside. The detenues in both these petitions are ordered tobe released forthwith, if not required in any other matter. Rule is made absolute in both the petitions with no order as to costs.

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